

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

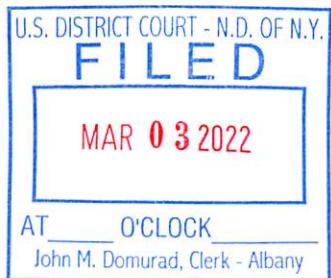
**UNITED STATES OF AMERICA**

v.

**KEVIN SMURPHAT,**

**Defendant.**

) Criminal No. 1:22-CR-**069-6LS**  
 )  
 ) **Indictment**  
 )  
 ) Violations: 18 U.S.C. § 2252A(a)(1)  
 ) [Transportation of Child  
 ) Pornography]  
 )  
 ) 18 U.S.C. § 2252A(a)(2)  
 ) [Distribution of Child  
 ) Pornography]  
 )  
 ) 18 U.S.C. § 2252A(a)(2)  
 ) [Receipt of Child  
 ) Pornography]  
 )  
 ) 18 U.S.C. § 2252A(a)(5)(B)  
 ) [Possession of Child  
 ) Pornography]  
 )  
 ) 5 Counts and Forfeiture Allegation  
 )  
 ) County of Offense: Washington



**THE GRAND JURY CHARGES:**

**COUNT 1**  
**[Transportation of Child Pornography]**

On or about November 3, 2020, in Washington County, in the Northern District of New York, the defendant, **KEVIN SMURPHAT**, knowingly transported child pornography using a means and facility of interstate and foreign commerce and in and affecting such commerce by any means, including by computer, in that the defendant did transport over the Internet and/or a cellular network, graphic image and video files depicting one or more minors engaged in sexually explicit conduct, in violation of 18 U.S.C. § 2252A(a)(1).

**COUNT 2**  
**[Distribution of Child Pornography]**

On or about November 5, 2020, in Washington County in the Northern District of New York, the defendant, **KEVIN SMURPHAT**, knowingly distributed child pornography using a means and facility of interstate and foreign commerce, shipped and transported in and affecting such commerce by any means, including by computer, in that the defendant, using an instant messaging application, did distribute, by way of the Internet and/or a cellular network, one or more graphic image files depicting a minor or minors engaged in sexually explicit conduct, in violation of 18 U.S.C. § 2252A(a)(2)(A).

**COUNT 3**  
**[Receipt of Child Pornography]**

On or about November 5, 2020, in Washington County in the Northern District of New York, the defendant, **KEVIN SMURPHAT**, knowingly received child pornography using a means and facility of interstate and foreign commerce, shipped and transported in and affecting such commerce by any means, including by computer, in that the defendant, using an instant messaging application, did receive, by way of the Internet and/or a cellular network, a graphic image file depicting a minor engaged in sexually explicit conduct, in violation of 18 U.S.C. § 2252A(a)(2)(A).

**COUNT 4**  
**[Receipt of Child Pornography]**

On or about November 7, 2020, in Washington County in the Northern District of New York, the defendant, **KEVIN SMURPHAT**, knowingly received child pornography using a means and facility of interstate and foreign commerce, shipped and transported in and affecting such commerce by any means, including by computer, in that the defendant, using an instant messaging application, did receive, by way of the Internet and/or a cellular network, a graphic image file

depicting a minor engaged in sexually explicit conduct, in violation of 18 U.S.C. § 2252A(a)(2)(A).

**COUNT 5**  
**[Possession of Child Pornography]**

On or about November 8, 2020, in Washington County in the Northern District of New York, the defendant, **KEVIN SMURPHAT**, did knowingly possess material that contained one or more images of child pornography that had been shipped and transported using a means and facility of interstate and foreign commerce, and in and affecting such commerce by any means, including by computer, and that was produced using materials that had been shipped and transported in and affecting such commerce by any means, including by computer, that is a Motorola model XT2005DL cellular telephone bearing international mobile equipment identifier (IMEI) 352180105596914 which was not manufactured in the state of New York, and which contained numerous graphic image and video files depicting one or more minors engaged in sexually explicit conduct, in violation of 18 U.S.C. § 2252A(a)(5)(B).

**PRIOR CONVICTION ALLEGATION**

The defendant, **KEVIN SMURPHAT**, committed the offenses charged in Counts 1 through 5 of this indictment after he had a final conviction under the laws of any state relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, in that on or about January 6, 2010, he was convicted in Essex County Court of Attempted Sexual Abuse in the First Degree, in violation of New York Penal Law, Sections 110/130.65(3), which makes it unlawful to attempt to subject another person to sexual contact when the other person is less than eleven years old.

This prior conviction affects the penalty provisions associated with Counts 1 through 5 pursuant to 18 U.S.C. §§ 2252A(b)(1) and (b)(2).

### **FORFEITURE ALLEGATION**

The allegations contained in Counts 1 through 5 of this indictment are hereby realleged and incorporated by reference herein for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 2253.

Pursuant to Title 18, United States Code, Section 2253, upon conviction of an offense in violation of Title 18, United States Code, Section 2252A, set forth in Counts One through Six of this indictment, the defendant, **KEVIN SMURPHAT**, shall forfeit to the United States of America:

- a. Any visual depiction described in Title 18, United States Code, Sections 2251, 2251A, and 2252, 2252A, 2252B, and 2260, and any book, magazine, periodical, film, videotape, and other matter which contains any such visual depiction, which was produced, transported, mailed, shipped and received in violation of Title 18, United States Code, Chapter 110;
- b. Any property, real and personal, constituting and traceable to gross profits and other proceeds obtained from such offense; and
- c. Any property, real and personal, used and intended to be used to commit and to promote the commission of such offense.

The property to be forfeited includes but is not limited to a Motorola model XT2005DL bearing IMEI 352180105596914.

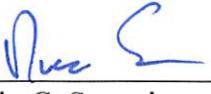
Dated: March 3, 2022

A TRUE BILL, \*\*\*REDACTED\*\*\*

[REDACTED]  
Grand Jury Foreperson

CARLA B. FREEDMAN  
United States Attorney

By:

  
Dustin C. Segovia  
Assistant United States Attorney  
Bar Roll No. 703016